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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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WALTER TRIPP,

v.
ISIDRO BACA, et al.,

Respondents.

Case No. 3:16-cv-00006-MMD-VPC

ORDER

This habeas matter comes before the Court on petitioner’s motion for appointment of counsel (ECF No. 12) and respondents’ motion for waiver of compliance with Local Rule LR IA 10-3 (ECF No. 11).

On petitioner’s motion for appointment of counsel, the Sixth Amendment right to counsel does not apply in habeas corpus actions. *See Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a financially eligible habeas petitioner whenever "the court determines that the interests of justice so require." The decision to appoint counsel lies within the discretion of the court; and, absent an order for an evidentiary hearing, appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent a due process violation. *See, e.g., Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986).


The Court is not persuaded that the interests of justice require the appointment of counsel herein, even if the Court were to assume that petitioner is financially eligible for

1 the appointment of counsel under § 3006A.¹ Petitioner filed the motion for appointment
2 of counsel at approximately the same time as his reply to respondents' answer, at the
3 conclusion of the submissions on all issues in the case. Both the 30-page reply and
4 petitioner's earlier 19-page petition reflect a more than adequate ability to present
5 petitioner's position *pro se* with the assistance and resources available to him. The Court
6 is not persuaded at this juncture that counsel is needed for factual development or that
7 an evidentiary hearing will be required to resolve the issues presented. Nor is the Court
8 persuaded that appointment of counsel is warranted because petitioner is over 70 years
9 old. Petitioner, again, is adequately presenting his claims with the resources available to
10 him, in a matter where no further submissions are contemplated under the governing
11 scheduling order.

12 It therefore is ordered that petitioner's motion for appointment of counsel (ECF No.
13 12) is denied.

14 It further is ordered that respondents' motion for waiver of compliance with Local
15 Rule LR IA 10-3 (ECF No. 11) is granted in part and denied in part. The Court waives
16 compliance with paragraphs (e) and (i) of the former version of Local Rule IA 10-3, but
17 respondents must send paper copies of record exhibits to staff, not .pdf files on a
18 computer disc, as per ECF No. 6 at 2 lines 3-6.

19 DATED THIS 27th day of September 2017.

20
21 
22 MIRANDA M. DU
23 UNITED STATES DISTRICT JUDGE
24

25 _____
26 ¹Petitioner's pauper application reflected that petitioner had \$650.00 a month in
27 deposits and over \$1,000.00 on hand at that time, with a substantial portion of his
28 expenditures going to apparently discretionary purchases at the commissary. The Court
in all events does not find that the interests of justice require the appointment of counsel
even if petitioner is regarded as financially eligible for such appointment after considering
his financial resources relative to his limited necessary expenses.